

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)
)

GC Docket No. 92-52

RM-7739

RM-7740

RM-7741

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REPLY COMMENTS OF BLACK CITIZENS FOR A FAIR MEDIA, *ET AL.*

Black Citizens for a Fair Media, Center for Media Education, Philadelphia Lesbian and Gay Task Force, Telecommunications Research and Action Center, The National Association of Puerto Rican Women, the Office of Communication of the United Church of Christ and the Hispanic Association on Corporate Responsibility (collectively referred to here as "BCFM, *et al.*"), submit these reply comments in the above referenced docket.

BCFM, *et al.* reiterate their support for the integration criteria and their belief that the Commission can and should retain them even in the face of the *Bechtel* decision. *See generally*, BCFM, *et al.* Comments.¹ As discussed below, the Commission must take special care not to undermine the *Bechtel* Court's core concern that there be some assurance of adherence to comparative promises.

I. The Commission Should Disregard Those Comments on Matters Not Within the Scope of this Proceeding.

Because of the urgent nature of this proceeding, a number of commenters have attempted to take advantage of this Docket to seek relief on extraneous matters and to reargue other long-settled issues. For obvious reasons, the Commission should promptly disregard those

¹BCFM, *et al.* agree with LULAC that the integration criteria, if adopted pursuant to a rulemaking proceeding, will have a much greater chance of passing judicial scrutiny. *See* LULAC Comments at 6-8.

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comments.

The *Second Further Notice of Proposed Rulemaking*, FCC No. 94-167 (released June 22, 1994) (hereinafter "*Second Further Notice*") requested a specific and narrow response to the question of how the Commission could conform its criteria "used in comparative hearings to award construction permits for new broadcast facilities" to satisfy the mandate of the D.C. Circuit in *Bechtel v. FCC*, 10 F.3d 875 (D.C.Cir. 1994). *Second Further Notice* at ¶1. The Commission also requested response on how pending comparative hearings should be treated if new criteria are adopted. *Id.* at ¶18.

Despite this strict command, a number comments urge the Commission, *inter alia*, to adopt a two-step renewal process for incumbent broadcast licensees identical to the process the Commission adopted for cellular licensees. *See, e.g.*, Comments of TAK Communications, Inc. at 12-13; Comments of Scripps Howard Broadcasting Company at 9; Comments of National Association of Broadcasters ("NAB") at 5-9; Comments of Channel 47 Partnership at 3-4. Notwithstanding the fact that a two-step process in the broadcast context runs contrary to the D.C. Circuit's decision in *Citizen's Communication Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971), *clarified*, 463 F.2d 822 (D.C.Cir. 1972),² this topic goes far beyond the scope of this proceeding.³

²For a more complete discussion of this issue, see May 26, 1993 Petition for Reconsideration and July 14, 1993 Reply to Oppositions to Petition for Reconsideration of Telecommunications Research Action Center and Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights filed in CC Docket 90-358.

³As several of the commenters acknowledge, the Commission already has commenced a proceeding to address questions surrounding broadcast renewal processes. *E.g.* NAB Comments at 5; TAK Communications Comments at 2 n.4. *See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 4 FCC Rcd 4780 (1989).

II. Local Marketing Agreements and "White Knight" Settlements Jeopardize the Validity of the Commission's Comparative Criteria.

One commenter urges the Commission not to "penalize an applicant for proposing and [sic] LMA or Joint Sales Agreement in their [sic] application,..." Comments of Art Moore, Inc. at 2. Others call for waivers of the Commission's "anti-white knight" policy to permit third parties who are not applicants for a station in pending renewal proceedings⁴ to enter a proceeding after it has already begun, buy out an existing applicant, and then pay the other parties to withdraw their applications. *E.g.*, TAK Communications Comments at 10-11, Channel 47 Comments at 2.

These are the most counterproductive measures imaginable. Tolerating increased use of Local Marketing Agreements (LMA's) and white knight settlements would threaten *all* the Commission's comparative criteria under the *Bechtel* standard. The crux of the Court's skepticism towards the integration criteria is the fact that the "Commission ha[d] done little to ensure its continuation once the promise of integration has carried an applicant to victory." *Bechtel*, 10 F.3d at 879. As discussed in BCFM *et al.*'s Comments at p.6 n.7, LMA's fly in the face of this concern because they permit parties, including non-licensees, who owe no fidelity to the licensees' comparative promises, to provide all or nearly all the programming for a community. Similarly, a "white knight" which buys out a winning applicant is under no obligation to comply with any comparative promises the winning applicant might have made.⁵

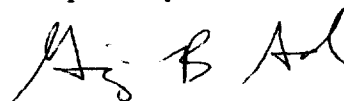
⁴As discussed above, as a general matter, discussion of the Commission's renewal processes is beyond the scope of the *Second Further Notice*.

⁵On the other hand, the "share-time" concept permitted in noncommercial radio proceedings promotes the goals of the Commission's comparative criteria by increasing the number and diversity of voices licensed to use the public's airwaves. Therefore, BCFM. *et al.* strongly

CONCLUSION

The Commission must reject any calls from broadcasters to stray from the confines of the *Second Further Notice*, which is limited to the issue of selecting proper criteria to be used in comparative hearings for new broadcast licenses. It should also decline any request that it tolerate LMA's or waive its anti-white knight policies in certain comparative proceedings, as those arrangements threaten all comparative criteria under *Bechtel*.

Respectfully submitted,



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ly disagree with APTS and NPR that the Commission forgo this concept and refuse to extend it to comparative noncommercial television proceedings. See Joint Comments of APTS and NPR at 3-4.